

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LLOYD DERREN RANDALL,

Defendant-Appellant.

UNPUBLISHED

February 6, 2007

No. 266083

Wayne Circuit Court

LC No. 05-002973-01

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of two counts of armed robbery, MCL 750.529. The trial court sentenced defendant to 10 to 20 years' imprisonment for each armed robbery conviction, the sentences to be served concurrently. Because a jury's conviction of armed robbery while failing to convict on the charge of possession of a firearm during the commission of a felony does not render the verdicts necessarily inconsistent or require reversal, we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that there was insufficient evidence to support his armed robbery convictions given the fact that the jury acquitted him of felon in possession of a firearm and possession of a firearm during the commission of a felony (felony-firearm). Defendant maintains that his verdict is inconsistent and requires reversal. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court reviews the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

The elements of armed robbery are: (1) an assault, and (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a dangerous weapon or with an article used or fashioned in such a way as to lead a reasonable person to believe that it is a dangerous weapon. *People v Banks*, 454 Mich 469, 473; 563 NW2d 200 (1997); *People v Ford*, 262 Mich App 443, 458; 687 NW2d 119 (2004). The existence of an object, either actually seen or as obscured, is objective evidence that the defendant possessed a dangerous weapon or an article used as one. *People v Jolly*, 442 Mich 458, 469; 502 NW2d 177 (1992). Related threats, either verbal or gesticulatory, further support the existence of a weapon or article, but a verbal threat of bodily harm is not necessary. *Id.* The fact-finder must be permitted

to determine the existence of a weapon or an article on the basis of all the circumstantial evidence. *People v Taylor*, 245 Mich App 293, 297-298; 628 NW2d 55 (2001).

The trial testimony strongly supports a finding that defendant committed armed robbery. The victims of the robbery, Delorence Tucker and Derrick Harris, testified that defendant pulled up to them in a blue Chevrolet Caprice and demanded that they empty their pockets, all the while possessing a handgun that was pointed at Tucker and Harris. Tucker testified that the handgun was resting on the driver's side windowsill and was pointed in Tucker and Harris's direction. Harris testified that the handgun was initially in defendant's lap, then defendant placed it atop the windowsill. Harris also testified that when Tucker put his hands in the air, defendant told him, "if you don't put your hands down, I'm going to kill you." Frightened, Tucker and Harris took out all of the money in their pockets and threw it into the car via the open driver's side window. Neither Tucker, nor Harris were impeached. Given the testimony, a rational trier of fact could find that the essential elements of armed robbery were proven beyond a reasonable doubt.

Defendant argues that the jury's verdict acquitting him of felony-firearm and felon in possession of a firearm negates a finding of guilt with regard to armed robbery. To prove the offense of felon in possession of a firearm, the prosecution must establish that a defendant, who has been convicted of a specified felony, possessed a firearm. *People v Tice*, 220 Mich App 47, 50; 558 NW2d 245 (1996). Here, defendant's status as a felon was not contested. To prove the offense of felony-firearm, the prosecutor must establish the following elements: (1) the possession of a firearm (2) during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999).

At the outset, we point out that the verdict in the instant case need not be characterized as inconsistent. Armed robbery does not require the use of a firearm; it can be established by showing that defendant was armed with a dangerous weapon or with an article used or fashioned in such a way that would lead a reasonable person to believe that it is a dangerous weapon. *Banks, supra* at 473. It is conceivable that the jury could have believed that defendant robbed Tucker and Harris while possessing some sort of dangerous weapon or article fashioned as such, but not a firearm. The jury could have concluded that Tucker and Harris were mistaken about seeing a handgun. In this manner, the verdict was not inconsistent. See *People v Lasenby*, 107 Mich App 462; 309 NW2d 572 (1981) (despite the victim's testimony that the defendant demanded money from him while armed with a gun, the jury's finding that the defendant was guilty of assault with intent to commit armed robbery and not guilty of possession of a firearm during the commission of a felony was not inconsistent and did not require reversal).

To the extent that the verdict can be considered inconsistent, it is well established that an inconsistent verdict does not require reversal of defendant's conviction. *People v Vaughn*, 409 Mich 463, 465-466; 295 NW2d 354 (1980). Jury verdicts rendered on several counts of a multicount indictment need not necessarily be consistent; each count in an indictment is regarded as if it was a separate indictment. *Id., supra* at 465, citing *Dunn v United States*, 284 US 390, 393; 52 S Ct 189; 76 L Ed 356 (1932). The *Vaughn* Court noted:

Our Court has recognized the role of the jury in a criminal trial. Because the jury is the sole judge of all the facts, it can choose, without any apparent logical basis, what to believe and what to disbelieve. What may appeal to the judge as 'undisputed' need not be believed by a jury. .

Juries are not held to any rules of logic nor are they required to explain their decisions. The ability to convict or acquit another individual of a crime is a grave responsibility and an awesome power. An element of this power is the jury's capacity for leniency. Since we are unable to know just how the jury reached their conclusion, whether the result of compassion or compromise, it is unrealistic to believe that a jury would intend that an acquittal on one count and conviction on another would serve as the reason for defendant's release. These considerations change when a case is tried by a judge sitting without a jury. But we feel that the mercy-dispensing power of the jury may serve to release a defendant from some of the consequences of his act without absolving him of all responsibility. [*Vaughn, supra* at 465-466 (internal citations and footnotes omitted.)]

See also *United States v Powell*, 469 US 57, 69; 105 S Ct 471; L Ed 2d 461 (1984) (acquittal of a predicate offense does not preclude conviction of a compound offense that requires proof of the predicate offense; "there is no reason to vacate respondent's conviction merely because the verdicts cannot rationally be reconciled."); *People v Lewis*, 415 Mich 443; 330 NW2d 16 (1982) (conviction allowed to stand where the defendant was convicted of felony-firearm but acquitted of the underlying felony). Therefore, the jury's verdict acquitting defendant of felony-firearm and felon in possession of a firearm does not negate a finding of guilt with regard to armed robbery.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio